

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

JOSEPH ANDREW HYLKEMA,)	
)	CASE NO. C11-0211-MAT
Plaintiff,)	
)	
v.)	
)	ORDER RE: PENDING SUMMARY
ASSOCIATED CREDIT SERVICE INC.,)	JUDGMENT MOTIONS
etc.,)	
)	
Defendants.)	
_____)	

INTRODUCTION

Plaintiff Joseph Andrew Hylkema proceeds *pro se* in this civil matter alleging violations of the Fair Debt Collection Practices Act and the Washington Consumer Protection Act by defendants Associated Credit Service Incorporated (ACS) and Linda and John Doe. Defendants filed a motion for summary judgment. (Dkt. 21.) Plaintiff opposed defendants' motion and filed a cross-motion for partial summary judgment. (Dkt. 25.) Having considered the pending motions, all accompanying documents, and the remainder of the record, the Court concludes that defendants' motion for summary judgment should be GRANTED, plaintiff's cross-motion DENIED, and this matter DISMISSED.

01 BACKGROUND

02 This case involves a debt in the amount of \$353.99 assigned to plaintiff and owing to
03 Sacred Heart Medical Center. (*See* Dkt. 23 at 4.) Defendant ACS sent plaintiff a notice of
04 assignment of debt on September 25, 2010 and a subsequent letter on October 25, 2010. (Dkt.
05 26, ¶¶ 8.1, 8.2 and Ex. C.)

06 On January 19, 2011, plaintiff telephoned ACS after observing a notation regarding the
07 debt on a credit report. He recorded the ensuing conversation with defendant Linda Doe.
08 Defendants provide a transcript of that conversation to the Court. (Dkt. 23.) Plaintiff orally
09 disputed the debt in his conversation with Doe. (*Id.*) Among other topics, Doe and plaintiff
10 discussed putting the dispute of the debt in writing and “charity care” at Sacred Heart Medical
11 Center. (*Id.*)

12 Following his conversation with Doe, plaintiff checked his credit report through
13 Experian, a national reporting agency, on a number of occasions. Experian credit reports
14 supplied by plaintiff do not reflect plaintiff’s dispute of the debt. (Dkt. 26, Ex. A.) Finding
15 no report of his dispute through Experian, plaintiff filed a Complaint in this Court on February
16 7, 2011. (*See* Dkt. 1.)

17 DISCUSSION

18 Summary judgment is appropriate when a “movant shows that there is no genuine
19 dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed.
20 R. Civ. P. 56(a). The moving party is entitled to judgment as a matter of law when the
21 nonmoving party fails to make a sufficient showing on an essential element of his case with
22 respect to which he has the burden of proof. *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23

01 (1986). The Court must draw all reasonable inferences in favor of the nonmoving party.
02 *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986).

03 The central issue is “whether the evidence presents a sufficient disagreement to require
04 submission to a jury or whether it is so one-sided that one party must prevail as a matter of law.”
05 *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 251-52 (1986). The moving party bears the
06 initial burden of showing the district court “that there is an absence of evidence to support the
07 nonmoving party’s case.” *Celotex Corp.*, 477 U.S. at 325. The moving party can carry its
08 initial burden by producing affirmative evidence that negates an essential element of the
09 nonmovant’s case, or by establishing that the nonmovant lacks the quantum of evidence needed
10 to satisfy its burden of persuasion at trial. *Nissan Fire & Marine Ins. Co., Ltd. v. Fritz Cos.,*
11 *Inc.*, 210 F.3d 1099, 1102 (9th Cir. 2000). The burden then shifts to the nonmoving party to
12 establish a genuine issue of material fact. *Matsushita Elec. Indus. Co.*, 475 U.S. at 585-87.

13 In supporting a factual position, a party must “cit[e] to particular parts of materials in
14 the record . . . ; or show[] that the materials cited do not establish the absence or presence of a
15 genuine dispute, or that an adverse party cannot produce admissible evidence to support the
16 fact.” Fed. R. Civ. P. 56(c)(1). The nonmoving party “must do more than simply show that
17 there is some metaphysical doubt as to the material facts.” *Matsushita Elec. Indus. Co.*, 475
18 U.S. at 585. “[T]he requirement is that there be no *genuine* issue of material fact. . . . Only
19 disputes over facts that might affect the outcome of the suit under the governing law will
20 properly preclude the entry of summary judgment.” *Anderson*, 477 U.S. at 247-48 (emphasis
21 in original). “The mere existence of a scintilla of evidence in support of the non-moving
22 party’s position is not sufficient[]” to defeat summary judgment. *Triton Energy Corp. v.*

01 *Square D Co.*, 68 F.3d 1216, 1221 (9th Cir. 1995). Nor can the nonmoving party “defeat
02 summary judgment with allegations in the complaint, or with unsupported conjecture or
03 conclusory statements.” *Hernandez v. Spacelabs Med. Inc.*, 343 F.3d 1107, 1112 (9th Cir.
04 2003).

05 In this case, for the reasons described below, the Court finds defendants entitled to
06 summary judgment.

07 A. Fair Debt Collection Practices Act

08 Section 1692e of the Fair Debt Collection Practices Act (FDCPA) prohibits a debt
09 collector from using “any false, deceptive, or misleading representation or means in connection
10 with the collection of any debt.” 15 U.S.C. § 1692e. Its purpose “is to protect vulnerable and
11 unsophisticated debtors from abuse, harassment, and deceptive collection practices.”
12 *Guerrero v. RJM Acquisitions LLC*, 499 F.3d 926, 938 (9th Cir. 2007).

13 “[W]hether conduct violates [the FDCPA] requires an objective analysis that considers
14 whether ‘the least sophisticated debtor would likely be misled by a communication.’”
15 *Donohue v. Quick Collect, Inc.*, 592 F.3d 1027, 1030 (9th Cir. 2010) (quoting *Guerrero*, 499
16 F.3d at 934). This least sophisticated debtor standard “‘ensure[s] that the FDCPA protects all
17 consumers, the gullible as well as the shrewd . . . the ignorant, the unthinking and the
18 credulous.’” *Clark v. Capital Credit & Collection Servs., Inc.*, 460 F.3d 1162, 1171 (9th Cir.
19 2006) (quoting *Clomon v. Jackson*, 988 F.2d 1314, 1318-19 (2d Cir. 1993)).

20 The FDCPA is a strict liability statute which should be construed liberally in favor of
21 the consumer. *Id.* at 1175-76. “[D]ebt collectors generally are liable for violating the
22 FDCPA’s requirements without regard to intent, knowledge or willfulness.” *Hunt v. Check*

01 *Recovery Sys., Inc.*, 478 F. Supp. 2d 1157, 1169 (N.D. Cal. 2007). The FDCPA “does not
02 provide an exception allowing the use of otherwise disapproved tactics in response to bad
03 behavior on the part of the consumer.” *Harper v. Collection Bureau of Walla Walla, Inc.*, No.
04 C06-1605-JCC, 2007 U.S. Dist. LEXIS 88993 at *14 (W.D. Wash. Dec. 4, 2007). However,
05 the FDCPA does provide a bona fide error defense, 15 U.S.C. § 1692k(c), and allows for an
06 award of attorney’s fees to a defendant where a Court concludes an action “was brought in bad
07 faith and for the purpose of harassment,” § 1692k(a)(3).

08 Plaintiff here raises three counts under the FDCPA, alleging violation of §§ 1692e(5),
09 (8), and (10). Defendants move to dismiss all three counts on summary judgment and, alleging
10 plaintiff’s bad faith, seek an award of attorney’s fees and costs. Plaintiff, in his cross-motion,
11 seeks to establish ACS’s liability for violating § 1692e(8) and both defendants’ liability for
12 violating § 1692e(10). Plaintiff also requests that the Court dismiss any bona fide error
13 defense raised by defendants.

14 (1) Section 1692e(5):

15 Section 1692e(5) of the FDCPA prohibits “[t]he threat to take any action that cannot
16 legally be taken or that is not intended to be taken.” Plaintiff alleges defendants violated this
17 section by threatening to sue him “when it did not intend to do so because Plaintiff’s account
18 did not meet Defendant’s suit criteria.” (Dkt. 1, ¶ 5.1.)

19 Pointing to the transcript of plaintiff’s conversation with Doe, defendants deny the
20 existence of any threat. They assert Doe properly told plaintiff it was in his best interest to put
21 his dispute of the debt in writing in order to avoid litigation. As defendants note elsewhere in
22 their motion, the FDCPA requires a consumer to dispute a debt in writing in order to stop

01 further collection activities. 15 U.S.C. § 1692g(b). Defendants deny the existence of the
02 alleged “suit criteria” and aver, despite the absence of any threat, that ASC has and continues to
03 use the court system to collect on accounts.

04 Plaintiff asserts, “[b]ased on [his] education, training and experience in the debt
05 collection industry,” his knowledge that collection agencies “rarely sue consumers to enforce
06 collection of debts.” (Dkt. 26, ¶ 9.) He opines that, “in [his] experience, no agency will file
07 suit in the absence of a verified source of garnishable income or, less frequently, real property
08 that a lien can be attached to[,]” and states that, because ACS did not have such information
09 about him, he is “firmly of the belief that it had no intention of suing [him].” (*Id.*) Plaintiff
10 also notes that defendants moved for summary judgment some eight months prior to the
11 discovery cutoff and suggests the Court defer a ruling on this issue to allow discovery regarding
12 ACS’s practices. *See* Fed. R. Civ. P. 56(d) (“If a nonmovant shows by affidavit or declaration
13 that, for specified reasons, it cannot present facts essential to justify its opposition, the court
14 may: (1) defer considering the motion or deny it; (2) allow time to obtain affidavits or to take
15 discovery; or (3) issue any other appropriate order.”)

16 Plaintiff does not dispute that defendants could take the step of pursuing legal recourse
17 in response to unpaid debts. Instead, he conjectures defendants had no intention of doing so in
18 this case. However, plaintiff does not respond to the contention that defendants never made a
19 threat to take action against him in the first instance. Further, plaintiff sets forth no basis for a
20 continuance to allow discovery in relation to this particular issue or to otherwise dispute that a
21 determination of the issue may be made by reviewing the transcript of his conversation with
22

01 defendant Doe.¹

02 Plaintiff and Doe engaged in the following conversation:

03 MR. HYLKEMA: I don't remember going to the hospital then. I actually
04 dispute this debt.

05 MS. LINDA ARBUCKLE: Okay. Just make sure you get it in writing for
06 legal purposes. Because if an account is not paid after so many days, it ends up
07 going in for lawsuit. So to avoid that you just want to get that sent in in writing.

08 . . .

09 MR. HYLKEMA: This is on my credit right now. Now that I've told you it's
10 disputed, you have to report it as being disputed.

11 MS. LINDA ARBUCKLE: Yeah. Once we get it in writing.

12 MR. HYLKEMA: No. Once I tell you on the phone. Once I place you on
13 notice orally that it's disputed, you have to report it as disputed.

14 MS. LINDA ARBUCKLE: Okay. But we don't have any reason why you're
15 disputing it. That's why we need it in writing. I can go ahead and mark it, but
16 it can still go in for lawsuit. I'm just trying to help you, not start an argument
17 here.

18 (Dkt. 23 at 7-8.) (*See also id.* at 12 (Doe also later stated: "I will note the account, but can
19 you get that in writing for us for legal purposes?")) When plaintiff then asked whether
20 defendants were "going to take [him] to court on this[.]" Doe responded: "No. I'm just
21 saying if you are disputing it and there's no payment and we don't get any dispute in writing,
22 then it could go in for suit. I'm just trying to tell you what could happen." (*Id.* at 8.) Also,

23 1 A party requesting a deferral or denial under Rule 56(d) "must show: (1) it has set forth in
24 affidavit form the specific facts it hopes to elicit from further discovery; (2) the facts sought exist; and
25 (3) the sought-after facts are essential to oppose summary judgment." *Family Home & Fin. Ctr. v. Fed.*
26 *Home Loan Mortgage Corp.*, 525 F.3d 822, 827 (9th Cir. 2008) (cited source omitted). Plaintiff, at
27 most, sets forth a basis for requesting a deferral for discovery in relation to ACS's intention to sue. (*See*
28 Dkt. 29 at 3.) Because he did not make a showing in relation to any other issue, the Court does not
29 otherwise consider Rule 56(d) in this Order.

01 when plaintiff thereafter asked whether there was “a very good chance of that happening[.]”
02 Doe replied: “I wouldn’t be able to tell you that.” (*Id.* at 8-9.)

03 This Court must consider whether the language used by Doe could be read as a threat to
04 take action. In making this determination, the Court considers the language from the
05 perspective of the hypothetical least sophisticated debtor. As discussed below, the Court finds
06 no basis for concluding defendants conveyed a threat to take action against plaintiff.

07 The transcript reveals that Doe advised plaintiff to put his dispute of the debt in writing
08 in order to avoid the possibility of litigation to collect on the debt. “The Ninth Circuit does not
09 construe threats of litigation so broadly as to include debt collection attempts that are merely
10 prudential reminders of the possible consequences of failure to pay.” *Abels v. JBC Legal*
11 *Group, P.C.*, 428 F. Supp. 2d 1023, 1028-29 (N.D. Cal. 2005). Here, the least sophisticated
12 debtor would understand the statements made as providing “a prudential reminder” that the
13 failure to put the dispute of the debt in writing could lead to litigation. *See Wade v. Regional*
14 *Credit Ass’n*, 87 F.3d 1098, 1099-1100 (9th Cir. 1996) (addressing a written notice stating: “If
15 not paid TODAY, it may STOP YOU FROM OBTAINING credit TOMORROW. PROTECT
16 YOUR CREDIT REPUTATION. SEND PAYMENT TODAY. . . . DO NOT DISREGARD
17 THIS NOTICE. YOUR CREDIT MAY BE ADVERSELY AFFECTED.”; finding the
18 language informational, not threatening, “notifying Wade that failure to pay could adversely
19 affect her credit reputation. There was no threat to sue. The least sophisticated debtor would
20 construe the notice as a prudential reminder, not as a threat to take action.”) *See also Dunlap v.*
21 *Credit Prot. Ass’n, L.P.*, 419 F.3d 1011, 1012-13 (9th Cir. 2005) (letter from collection agency
22 warning a debtor it was “‘an attempt to collect a debt’ and that ‘any information obtained will

01 be used for that purpose,” notifying the debtor that his account was past due, and informing
02 him of his right to dispute the debt, did not violate § 1692e(5); finding the letter “at worst, only
03 vaguely and generally implies that the reader should pay his debt in order to protect his credit
04 rating.”) (citing *Wade*, 87 F.3d at 1099-1100); *Hylkema v. Capital Recovery Assoc., Inc.*, No.
05 C03-3686P, slip op. at 4 (W.D. Wash. Sep. 20, 2004) (Dkt. 15) (a letter stating it served as ten
06 days notice “before any legal action [] was recommended[]” and that no decision had “yet been
07 made to pursue this claim through the courts because that option rests with our client[,]” did not
08 constitute a threat to take unlawful action under § 1692e(5)). Indeed, when asked by plaintiff,
09 Doe explicitly clarified she was informing him merely as to a future possibility in relation to the
10 debt. (Dkt. 23 at 8.)

11 In sum, defendants establish through the transcript an absence of evidence to support
12 plaintiff’s claim of a threat in violation of § 1692e(5). The Court finds no genuine issue of
13 material fact in relation to this claim and plaintiff’s first cause of action under the FDCPA
14 subject to dismissal on summary judgment.

15 (2) Section 1692e(8):

16 Section 1692e(8) of the FDCPA prohibits “[c]ommunicating or threatening to
17 communicate to any person credit information which is known or which should be known to be
18 false, including the failure to communicate that a disputed debt is disputed.” Plaintiff avers in
19 his second FDCPA count that defendant ACS “threatened to communicate and has in fact
20 communicated false credit information, including the failure to communicate that Plaintiff
21 disputed the validity of the Alleged Debt.” (Dkt. 1, ¶ 5.2.)

22 Defendants assert that, following plaintiff’s oral dispute of the debt, no further

01 collection activities were taken, the debt was marked as disputed in ACS's computer system,
02 and the dispute was reported to all three national reporting agencies. (Dkt. 22 at 4-5.)
03 Defendants point to its "case summary report", or case notes, as documenting the noted dispute,
04 and aver the absence of any evidence ACS communicated any false credit information or that it
05 failed to communicate the debt as disputed. Defendants state they "have no control over what
06 each reporting agency does or how rapidly they adjust their reports." (Dkt. 21 at 9.)

07 Plaintiff contends he checked his Experian credit report seven times after his January
08 19, 2011 conversation with Doe, and that, as late as March 18, 2011, the report failed to show
09 the debt as disputed. (Dkt. 26, ¶4 and Ex. A (credit reports dated December 29, 2011, January
10 27, 2011, and March 18, 2011).) He contends the case notes confirm that: "Immediately after
11 the call, rather than mark the account as disputed (status DSP), ACS put the account in active
12 collection status (status SNM) and ran a skiptrace search to find new information on Plaintiff,
13 i.e., it did not cease collection of the Alleged Debt[.]" (*Id.*, ¶ 8.4 and Ex. C.) Plaintiff further
14 relies on the case notes as showing that, even after being served with the instant lawsuit on
15 February 7, 2011, ACS did not take any action with respect to credit reporting until March 21,
16 2011, when the "credit bureau reporting flag (CBR Type) was changed, first from Y (report as
17 undisputed) to C (consumer disputes account information per the Fair Credit Reporting Act),
18 and then from C to Z (delete account entirely)." (*Id.*, ¶ 8.5 and Ex. C.)

19 Defendants, in response, submitted a supplemental declaration from David Solberg,
20 officer and owner of ACS, disputing plaintiff's interpretation of the case notes. (Dkt. 28.)
21 Solberg states that "SNM" means "send no mail" and "DSP" means "disputed[.]" and avers that
22 ACS did show the account as disputed and ceased further collection efforts. (*Id.*, ¶ 4.)

01 Ninth Circuit law is clear that “[o]ral dispute of a debt precludes the debt collector from
02 communicating the debtor’s credit information to others without including the fact that the debt
03 is in dispute.” *Camacho v. Bridgeport Fin. Inc.*, 430 F.3d 1078, 1082 (9th Cir. 2005).
04 Therefore, a defendant with notice a debt is in dispute violates § 1692e(8) by communicating
05 with a third party about the debt without disclosing the dispute. *See Brady v. Credit Recovery*
06 *Co., Inc.*, 160 F.3d 64, 67 (1st Cir. 1998) (“§ 1692e(8) merely requires a debt collector who
07 knows or should know that a given debt is disputed to disclose its disputed status to persons
08 inquiring about a consumer’s credit history.”); *Perez v. Telecheck Services, Inc.*, 208 F. Supp.
09 2d 1153, 1156 (D. Nev. 2002) (same).

10 The Court first notes the absence of support for plaintiff’s contention that defendants
11 failed to internally mark his debt as disputed. The case notes show fourteen separate entries
12 dated January 19, 2011. (Dkt. 26, Ex. C.) The first entry on that date shows the status of the
13 account as “DSP”, which plaintiff concedes means “disputed”. (*Id.*, ¶ 8.4 and Ex. C.) The
14 second entry states “Status Chg: SNM to DSP”, while another entry states “Dispute Charges”
15 and another indicates plaintiff was advised the account would be noted as disputed. (*Id.*, Ex.
16 C.) While it is unclear why some of the fourteen status entries dated January 19, 2011 reflect
17 the debt status as “SNM”, the evidence as a whole clearly establishes that ACS promptly
18 marked the account as disputed.

19 More importantly, however, plaintiff fails to set forth any factual basis for a contention
20 that defendant ACS at any point violated § 1692e(8) by engaging in a communication with a
21 third party in which it failed to disclose the fact that plaintiff disputed the debt, or otherwise
22 communicated or threatened to communicate any false information. At most, plaintiff

01 contends ACS “ran a skiptrace search to find new information on Plaintiff[.]” (*Id.*, ¶ 8.4.)
02 This assertion does not support a contention that defendants engaged in a communication with a
03 third party regarding plaintiff’s debt. Nor does plaintiff point to any other evidence
04 demonstrating the existence of such a communication. In fact, the credit reports submitted by
05 plaintiff appear to reflect no activity regarding the debt after November 2010. (*Id.*, Ex. A.)

06 Instead of supplying evidence of a communication or threatened communication,
07 plaintiff reads into the FDCPA an affirmative obligation to contact credit reporting agencies
08 with the fact that a debt is disputed. (*Id.*, ¶ 5 (“Satisfied that ACS had no intention of reporting
09 the account as disputed as it was required to do, I commenced my lawsuit on February 7,
10 2011.”)) As noted above, ACS maintains it did report the dispute to the credit agencies, while
11 plaintiff points to the absence of any evidence the credit agencies were aware of the report until
12 on or about March 21, 2011. However, the Court finds no dispute of material fact precluding
13 summary judgment given its conclusion that ACS was not obliged to contact the credit agencies
14 to report the dispute.

15 In *Wilhelm v. Credico, Inc.*, 519 F.3d 416, 418 (8th Cir. 2008), the Eighth Circuit found
16 no affirmative duty to report the fact that a consumer disputed a debt absent a communication in
17 which that fact should have been reported. Instead, “if a debt collector *elects* to communicate
18 ‘credit information’ about a consumer, it must not omit a piece of information that is always
19 material, namely, that the consumer has disputed a particular debt.” *Id.* (emphasis in original).
20 The Court noted Federal Trade Commission (FTC) Staff Commentary to the FDCPA
21 confirming its conclusion:

22 1. Disputed debt. If a debt collector knows that a debt is disputed by the

01 consumer . . . and reports it to a credit bureau, he must report it as disputed.

02 2. Post-report dispute. *When a debt collector learns of a dispute after reporting*
03 *the debt to a credit bureau, the dispute need not also be reported.*

04 *Id.* (citing FTC Staff Commentary, 53 Fed. Reg. 50097-02, 50106 (Dec. 13, 1988)) (emphasis
05 included in case citation). While the Ninth Circuit has not directly addressed this precise issue,
06 it has implicitly recognized that § 1692e(8) prohibits the omission of information as to a dispute
07 within the context of an actual communication to a third party. *See Camacho*, 430 F.3d at
08 1082 (“Oral dispute of a debt precludes the debt collector from communicating the debtor’s
09 credit information to others without including the fact that the debt is in dispute.”)

10 Here, there is no indication of a communication or threatened communication in which
11 defendants failed to convey plaintiff’s dispute of the debt. Plaintiff, accordingly, sets forth no
12 basis for a violation of § 1692e(8). *See, e.g., Wilhelm*, 519 F.3d at 418 (summary judgment
13 properly granted where plaintiff presented no evidence of communication of credit information
14 to credit reporting agency after defendant learned of debt dispute). The Court finds plaintiff’s
15 cross-motion for summary judgment on his § 1692e(8) claim to lack merit, and defendants
16 entitled to dismissal of this claim on summary judgment.

17 (3) Section 1692e(10):

18 Section 1692e(10) prohibits “[t]he use of any false representation or deceptive means to
19 collect or attempt to collect any debt or to obtain information concerning a consumer.”
20 Plaintiff alleges defendants attempted to collect the debt through “repeated false, misleading or
21 deceptive representations and means, specifically false statements regarding Plaintiff’s oral
22 dispute rights[,]” and “also falsely stated that it intended to sue Plaintiff and that Plaintiff was

ineligible to apply for charity care.” (Dkt. 1, ¶¶ 5.3, 5.4.)

Defendants point to the transcript as showing Doe repeatedly stated plaintiff’s account was being marked as disputed. Defendants assert that Doe properly informed plaintiff the dispute must be in writing to stop further collection activities. 15 U.S.C. § 1692g(b). They again deny the existence of any threat to sue plaintiff, and deny Doe stated plaintiff was ineligible for charity care. Defendants maintain that, in raising these contentions, plaintiff intentionally misstated facts in the Complaint.

Pointing to the transcript and ACS case notes, plaintiff argues defendants informed him his dispute would have to be in writing to be effective “(i.e., for the Alleged Debt to be reported to Experian as disputed).” (Dkt. 26, ¶ 8.3.) He maintains defendants threatened to sue him without having any intention of carrying out a suit. He does not, however, raise any argument in relation to charity care.

Plaintiff’s assertion regarding the threat of suit is subject to dismissal for the reasons outlined above. That is, contrary to plaintiff’s contention, the transcript cannot reasonably be read, from the perspective of the least sophisticated debtor, to support the conclusion that defendants threatened to sue plaintiff. Likewise, the transcript contradicts plaintiff’s contention regarding charity care. The transcript reveals that plaintiff asked whether the hospital had a charity care policy, and Doe replied: “Only if you follow the credit procedures, yes, they do. It looks like that wasn’t done.” (Dkt. 23 at 9.) When plaintiff asked, “Well, I can still follow those procedures, correct?”, Doe responded, “I don’t know. This is not the hospital. I said this is Associated Credit, a collection agency for the hospital.” (*Id.*) Considered as a whole, the least sophisticated debtor could not reasonably understand Doe’s

01 statements as informing plaintiff he was ineligible to apply for charity care, or that Doe was
02 otherwise using any false representation or deceptive means to collect or attempt to collect a
03 debt.

04 Nor does plaintiff support his contention as to the statements made regarding putting his
05 dispute in writing. Pursuant to 15 U.S.C. § 1692g(b), “a consumer must dispute a debt *in*
06 *writing*, within an initial thirty-day period, in order to trigger a debt validation process.”
07 *Brady*, 160 F.3d at 67 (emphasis in original). *Cf. Camacho*, 430 F.3d at 1082 (finding oral
08 notification sufficient in relation to § 1692g(a)(3), which pertains to the assumption of validity
09 of a debt). “Once a consumer exercises this right, a debt collector must cease all further debt
10 collection activity until it complies with various verification obligations.” *Brady*, 160 F.3d at
11 67. “Recognizing the broad consumer power granted by this provision, Congress expressly
12 conditioned its exercise on the submission of written notification within a limited thirty-day
13 window.” *Id.*

14 The transcript, read in full, shows that Doe told plaintiff numerous times the debt was
15 being marked as disputed, and tied the statements challenged here by plaintiff specifically to the
16 potential for further collection activities and litigation:

17 . . . Okay. Just make sure you get it in writing for legal purposes. Because if
18 an account is not paid after so many days, it ends up going in for lawsuit. So to
19 avoid that you just want to get that sent in in writing. . . . Okay. But we don’t
20 have any reason why you’re disputing it. That’s why we need it in writing. I
21 can go ahead and mark it, but it can still go in for lawsuit. . . . I’m just saying if
22 you are disputing it and there’s no payment and we don’t get any dispute in
writing, then it could go in for suit. I’m just trying to tell you what could
happen. . . . I will note the account, but can you get that in writing for us for
legal procedures?. . . I will go ahead and note for the account that you are
disputing it. . . . I will note in your account that you’re disputing. . . . I’m
going to note the account like you asked me to. . . . I’m going to go ahead and

01 note the account.

02 (Dkt. 23 at 4-5, 12-14.) As reflected above, Doe did at one point state, “Yeah. Once we get it
03 in writing[,]” in response to plaintiff stating, “This is on my credit right now. Now that I’ve
04 told you it’s disputed, you have to report it as being disputed.” (*Id.* at 8.) However, this
05 statement was sandwiched between the other remarks outlined above and cannot reasonably be
06 read in isolation to support the contention that it would be likely to mislead the least
07 sophisticated debtor as to his rights.

08 The case notes also contradict plaintiff’s contention. The case notes clearly show the
09 debt was noted as disputed. (Dkt. 26, Ex. C.) The case notes further mirror the statements in
10 the transcript, reflecting Doe told plaintiff his dispute of the account would be noted, and
11 making a distinction between the noting of plaintiff’s account as disputed and the request for a
12 written dispute. (*Id.* (“SYS HE DISPUTE THIS TOLD HIM WE NEED LTR IN WRITING
13 SYS NO I DNT THINK SO SYS WILL CHCK C/R NXT MNTH N IF STILL ON HERE HE
14 WILL SUE US/TOLD HIM I WOULD NOTE THE FILE...”; “ADV DTR I WILL NOTE U
15 DISPT ACCT[.]”))

16 In sum, contrary to plaintiff’s contention, the evidence does not support the allegation
17 that defendants made a false representation or utilized deceptive means to collect or to attempt
18 to collect a debt. Plaintiff sets forth no genuine issue of material fact and fails to support his
19 motion for summary judgment. This claim is also subject to dismissal on summary judgment.²

20
21 ² Plaintiff seeks the dismissal of any bona fide error defense on the ground that ACS failed to
22 produce sufficient evidence it maintains the requisite procedures reasonably adapted to avoid such error.
See Clark, 460 F.3d at 1176-77 (“[A] debt collector is not liable for its violations of the FDCPA if the
violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of
procedures reasonably adapted to avoid any such error.”); 15 U.S.C. § 1692k(c). However, because the

01 B. Consumer Protection Act

02 Plaintiff alleges in his Complaint that defendants violated the Washington Consumer
03 Protection Act (CPA) by engaging in unfair acts or practices injurious to the public interest.
04 He specifically alleges violation of the CPA through a threat to impair his credit rating if the
05 debt in question was not paid. Defendants, pointing to the transcript, aver the absence of any
06 support for such a claim, and contend plaintiff acted in bad faith by intentionally alleging false
07 facts. They note that plaintiff recorded the conversation and had the recording in his
08 possession at the time he filed the Complaint.

09 Plaintiff does not respond to this argument or otherwise address his CPA claim in his
10 opposition and cross-motion. Plaintiff's failure to respond is considered a concession that
11 defendants' argument has merit. Local Civil Rule 7(b)(2). Moreover, the Court finds an
12 absence of any evidence to support plaintiff's contention that defendants threatened to impair
13 his credit rating if he failed to pay his debt. (*See* Dkt. 23.) Plaintiff's CPA claim is,
14 accordingly, subject to dismissal on summary judgment.

15 C. Attorney's Fees and Costs

16 The FDCPA provides for payment of attorney's fees and costs upon "a finding by the
17 court that an action . . . was brought in bad faith and for the purpose of harassment[.]" 15
18 U.S.C. § 1692k(a)(3). Defendants argue plaintiff initiated phone contact with ACS for the
19 purpose of attempting to create a violation of the FDCPA by goading and prompting
20 defendants. (Dkt. 21 at 10.) They contend plaintiff intentionally misstated facts in the
21

22 Court finds no FDCPA violation, it need not address this argument.

01 Complaint to create litigation and harass defendants. Defendants note the existence of some
02 twenty cases filed by plaintiff in this Court alleging violations of the FDCPA, and state that the
03 filing of these cases “appears to be for the purpose of increasing the costs to collection agencies
04 and settling to avoid payment of his debts.” (*Id.* at 11.)

05 Although defendants raise legitimate questions regarding plaintiff’s intentions, the
06 Court does not find a sufficient basis upon which to conclude plaintiff filed his complaint in bad
07 faith or for the purpose of harassment. The Court, therefore, declines to exercise its discretion
08 to award attorney’s fees and costs to defendants.

09 CONCLUSION

10 For the reasons stated above, plaintiff’s motion for partial summary judgment (Dkt. 25)
11 is DENIED, defendants’ motion for summary judgment (Dkt. 21) is GRANTED, and this
12 matter is DISMISSED with prejudice. The Court finds no basis for an award of attorney’s fees
13 and costs.

14 DATED this 4th day of January, 2012.

15
16 

17 Mary Alice Theiler
18 United States Magistrate Judge
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